

STATE OF VERMONT

AGENCY OF ADMINISTRATION

BULLETIN NO. 3.5

CONTRACTING PROCEDURES

ISSUED BY: William H. Sorrell, Secretary of Administration

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I. POLICY AND PURPOSE

This Bulletin establishes the general policy and minimum standards for soliciting vendors of services and products outside state government and processing the related contract(s).

Policy Statement: It is the policy of the State of Vermont to obtain high quality services and materials in a cost effective manner through the maximum use of an open and competitive contract solicitation process. Supervisors, as herein defined, are hereby delegated the management and oversight responsibilities for the procurement and contracting process for services and products and are directed to oversee these responsibilities in a manner consistent with this policy and with the provisions of this Bulletin.

II. DEFINITIONS

As used in this Bulletin:

"Agency" means an agency, department, division, board or other administrative unit of the Executive Branch, including the elected constitutional offices as well as those having express statutory authority to enter into contracts.

"Conflict of interest" means a pecuniary interest of an employee in the award or performance of the contract, or such an interest, known to the employee, by a member of his /her immediate family or household or a business associate.

"Contract" means any legally enforceable agreement between an agency and another legal entity to provide services and/or products. The term contract includes all such agreements whether or not characterized as a "contract," "agreement," "miscellaneous agreement," "letter of agreement," or other similar term.

"Products" shall be broadly interpreted and includes equipment, materials, supplies, printing, and other commodities. The term applies to the lease and lease-purchase of equipment such as computers, copiers and/or other office machinery.

"Services" shall be broadly interpreted and includes personal and professional services of an individual or of persons working for a business enterprise; construction services; design and engineering services; real estate services and the maintenance of equipment.

"Supervisor" means any secretary, commissioner, executive director, independent constitutional officer or other head of an agency.

"Secretary" means the Secretary of Administration.

III. WHEN TO USE A CONTRACT

Contracts normally are to be used to acquire services and/or products from other than state entities or employees of the state in the course of their employment.

A. Grant or Contract

While the most common utilization of a grant is for the direct support of persons, grants are also commonly given to organizations which perform public benefit activities with a high degree of independence. Promises made by a grantee in a grant agreement are as enforceable as are promises by a contractor.

The degree of agency supervision is a key question in deciding whether to contract or award a grant. Broadly speaking, grants are appropriate when an agency retains very little control over the grantee's performance. At the other extreme, close or frequent supervision indicates that employment (temporary or permanent) should be utilized, particularly if the worker is expected to work regular hours. Contracts are generally appropriate when the agency's supervisory control falls between these two extremes.

A grant, not a contract, should be used when:

1. Appropriated funds are characterized in the law as "grants";
2. The principal purpose is to support or stimulate a quasi-public activity, the primary benefit of which is to a client or customer group rather than the agency itself or wards of state government; **and**
3. There will not be substantial state oversight of the funded activity, other than providing guidance upon request and accumulating information on the progress achieved and financial status at the close of the program or activity.

When a proposed "grant" does not meet the above test, an agency should utilize a contract. For example, a grant would be appropriate when the grantee is responsible for identifying the individuals within a served client population such as "mentally retarded adults in the Springfield area". In contrast, a contract would be appropriate when the vendor serves specific individuals identified by the contracting agency, such as state wards or "persons referred by the district office staff".

B. Personal Services Contracts: Contractors and Employees

Generally, personal services should be obtained from state employees rather than contractors. Contractors should not be used to do the continuing work of the government nor when an agency of the state is able to provide quality services at competitive market rates.

Federal and state tax laws establish stringent rules regarding when an agency's "contractor" has to be treated for tax purposes as an "employee". An agency which is unaware of these tax rules can

have an unexpected tax liability, including penalties, after the contract is completed, or may face an unexpected claim for unemployment compensation. The fact that an agency chooses to characterize the relationship as "contractual" rather than as "employment" has little bearing on the outcome. An agency's responsibility in these matters depends on the facts of the relationship and not upon the manner in which it is described.

In order to minimize such risks, agencies generally should not enter into personal services contracts when the agency would be liable under state or federal law for income tax withholding, for F.I.C.A. taxes, or for unemployment or workers' compensation benefits.

1. ABC Test

Unless all three of the following "ABC" conditions are met, a personal services contract is not appropriate and an employment option is recommended:

- a. The agency will not exercise supervision over the daily activities, times of work, or the means and methods by which the contractor provides services, either in fact or under the terms of the contract. However, the agency may ensure that the contractor meets performance specifications contained in the contract.
- b. The service provided is not of the kind usually provided by the agency.
- c. The contractor customarily engages in an independently established trade, occupation, profession or business. If the contractor retains the ability to engage other clients during the contract term, this normally proves the existence of an independently established business.

If it is not appropriate to form a contract, an agency should use temporary employees, limited service employees, or permanent employees to do the work. As more fully described in Bulletin 4.10:

- Permanent classified or exempt positions can only be authorized by the Legislature.
- Limited service positions can be authorized by the Joint Fiscal Committee in connection with a grant, or by the Legislature itself.
- Temporary employees can only be hired with approval of the Commissioner of Personnel in accordance with 3 VSA § 331. Except when emergency approval is given by the Commissioner of Personnel, a temporary employee cannot work for more than 1520 hours per calendar year.

2. Exceptions: Notwithstanding the foregoing, an agency may enter into a personal services

contract in the following cases:

- a. When a statute, other legislative authorization or executive order explicitly directs that an agency may use contractors. An example would be highway construction and planning (19 VSA § 10(1)). Such contracts are not exempt from the procedures in this Bulletin.
- b. When the contractor has unique abilities not available in a pool of prospective employees and recruitment has been unsuccessful.
- c. For clerical or secretarial services provided by an established company which normally provides such services when necessary to replace a vacationing or otherwise absent employee.
- d. "Contracting out" may be specially approved by the Secretary if significant savings are likely in program cost and the contractor will not be asked to exercise sovereign powers such as the police power or eminent domain, to establish state policy, or to represent government policies to the public. Contracting out will not be approved when a contractor will work in close proximity to state employees doing the same or a very similar task.

IV. MISCELLANEOUS

A. Opportunity to Compete

Executive Order #15-91 requires all agencies of state government to adopt and implement the following policy:

The State of Vermont recognizes the important contribution and vital impact which small businesses have on the state's economy. In this regard, the state subscribes to a free and open bidding process that affords all businesses equal access and opportunity to compete for state contracts for goods and services. The state also recognizes the existence of businesses owned by minorities and women and directs all state agencies and departments to make a good faith effort to encourage these firms to compete for state contracts.

B. Conflict of Interest

Employees with a conflict of interest should not be permitted to control or influence the award of contracts. **The Executive Code of Ethics - EO #8-91 sets standards that should be used as the main guide.**

Additionally, every effort should be made to avoid the "appearance" of a conflict of interest in the contracting process.

C. Umbrella Product Contracts

In many instances, the Department of General Services maintains "umbrella" contracts for materials, supplies, parts, or commodities, which generally should be used by an agency. Contact the State Purchasing Division or use the Automated Purchasing System. (Consult the state purchasing manual for how to use the purchasing system.)

D. Contract Duration

An agency should carefully consider what term (i.e. period of time) is appropriate for a contract. In certain situations, e.g. when purchasing goods or services for which there is a continuing need, the agency must decide what period of time best meets the State's immediate and longer term needs. Considerations should include, among other things, the nature of the goods or services to be obtained and the state of any particular industry or market involved. Generally, shorter contracts are favored over longer contracts. Accordingly, an agency must have good cause to contract for more than two years at a time. If it is reasonable to believe the State might want to extend the contract beyond a base period, this fact should be noted. **The maximum for any such extensions is two additional years.**

E. Price

Price should always be a substantial consideration in selecting a contractor but often it is not the only consideration. An agency should establish selection criteria that provide for the overall best interests of the State. In addition to price, the criteria may also include factors such as qualifications, experience, quality of past work, references and timeliness, among others.

V. THE BIDDING PROCESS

A. Pre-qualified Bidding

In order to streamline the bidding process for instances where a type of work is routinely bid, it can be more efficient for an agency to establish a list of pre-qualified vendors. A pre-qualified vendor is one which has been determined by an agency to be generally qualified to perform a type of work routinely bid by the agency. All vendors who are determined qualified to perform the type of work for which the prequalification list has been established and who so request should be included on the list by the agency.

At least once in a two year period, an agency using a pre-qualified bidding process must publicly solicit the opportunity to be placed upon the list. Such agency should establish clear criteria for the qualifications that, if met, allow potential vendors to be included on the prequalification list. Additionally, the agency should maintain an on-going process during the period between formal list revisions which allows additional vendors to request review and addition to the

prequalification list.

An agency may limit the bidding for specific work to vendors on a prequalification list as long as bids from at least three qualified vendors are solicited. All vendors on the list shall be given the opportunity to bid for the work. When applicable, the public notice requirement shall include the restriction that bidding is limited to those on a pre-qualification list and provide information as to how vendors can be included on this list.

B. The Bid Documents

For any contract relating to information technology services or equipment, the Chief Information Officer should be consulted and, where appropriate, should review and approve the bid documents. Pursuant to 32 VSA § 163(9), the Auditor of Accounts must approve requests for accounting or auditing services.

1. Scope of Services: The bid documents must include a scope of services. The purpose of the scope of services is to provide prospective vendors with clear and concise information regarding the requested work. The scope of services should at minimum describe in detail the work to be performed, the time frame for the work, any interim completion dates and the expected outcomes and related performance standards. A thorough and well-structured scope of services enhances the responsiveness of vendors during the solicitation process, promotes the reliability and comparability of proposals, and minimizes the need for contract negotiations and subsequent contract amendments.

2. Context for the Work and Management Structure: The bid documents should provide the vendor with a brief overview of the recent history leading to the agency's decision to seek a contractor. Such an overview will provide vendors with a better understanding of the purpose and context of the work. Additionally, the management structure for the contract within the agency should be described.

3. Bid and Contract Requirements: Bid documents should clearly explain to bidders the procedural and substantive requirements of the bidding process and the key components of the resulting contract. For example, the schedule and location for all bid-related activities should be explicitly stated. These would include on-location views of the work area, any pre-bid informational conferences, the time and location for the submission of bid documents and the time, date and location of the bid opening. Any special requirements for submissions with the bid, such as bid bonds, qualification profiles, resumes of key personnel performing the work, etc. should be explicitly stated.

Relative to contract requirements, the bid documents should describe the key elements of the contract to be signed with the vendor winning the bid. The recommended method of meeting this requirement is to attach to the bid documents a copy of the basic contract documents which the selected vendor will be expected to execute.

4. Price Quotation Form: The bid documents should include a price quotation form. The form should explicitly allow for price quotations for the core services or products requested and for each incremental phase of a project where the agency has determined the project to be of a phased nature. In any case when contract extension is contemplated, the quotation form should explicitly provide for a price quotation applicable to each such extension. Additionally, the form should allow for separate price quotations for optional services or products related to the core work which the agency may consider adding to or deleting from the basic bid.

5. The Basis for Selection: The bid documents should clearly explain the selection criteria to be used by the agency in the selection process. If certain factors in the selection process are of relatively more importance than others, the degree of such relative importance should be clearly stated and, if possible, quantitatively profiled.

6. Pre-bid Conferences and Adjustments to Bid Documents: For large or complex work, it is recommended that the agency hold a pre-bid conference where agency staff can review with potential vendors the scope of services for the work and other content of the bid documents.

Any change to or changed state interpretation of the bid documents resulting from a pre-bid conference or from any other cause upon which the agency intends bidders to rely, should be communicated in writing in a timely manner to all vendors in receipt of the bid documents.

C. Public Notice regarding the Bid

The opportunity to bid for the proposed work must be broadly publicized. At minimum, such solicitation should include advertising in a newspaper of record broadly circulated throughout Vermont at least twice during a two week period and advertising on the Electronic Bulletin Board operated by the Department of Libraries and the Department of General Services. Other methods of solicitation include direct mailings to potential vendors, direct mailings to vendors on a pre-qualified list (see above) and/or publication in trade journals. It is important for an agency to maintain a list of those requesting bid documents.

The time between the initial public notice and the opening of bids should be at least two weeks. For relatively complex work, additional time should be permitted in order to allow potential vendors a reasonable opportunity to obtain the bid documents and prepare a responsive bid.

D. The Bid Opening

A public bid opening and reading of bids should be the norm and is required for contracts over \$75,000. Two staff of the agency should be in attendance at the bid opening. Bids that have not been received prior to the established time for the receipt of bids shall be returned unopened to the bidder.

E. Contractor Selection and Documentation

1. **Selection:** The bid most responsive to the selection criteria established in the bid documents should be accepted. When appropriate, a supervisor may establish a contract selection committee to review the bids and make a written recommendation.

The agency should notify all bidders of its decision.

2. **Documentation:** A copy of the scope of services, price quotations, vendors solicited and any written selection justifications must be placed in the contract file. When other than the lowest bid is accepted, there must be documentation concerning the quality of services, products or other relevant considerations offered by a higher priced vendor which justify the award of the contract to the higher priced vendor.

F. Apparent Conflict of Interest

If a reasonable person might conclude that a contractor was selected for improper reasons, the supervisor should disclose that fact in writing to the AG and the Secretary and document the reasons why selecting the desired contractor is still in the best interests of the State.

An agency may award a contract to a person serving on a board related to the agency provided:

- a. The board does not have any control over the award of the contract; and
- b. The contract award meets all the applicable bidding requirements in this Bulletin.

G. Exceptions and Waivers

1. **Sole Source Exceptions:** Every reasonable effort should be taken to promote a competitive solicitation process when selecting a contractor. However, in extraordinary circumstances, negotiating with only one contractor may be appropriate. Examples of when a sole source contract might be appropriate include when time is critical for performance of the required services, e.g. emergency repairs and/or when only one contractor is capable of providing the needed service or product.

In other than emergency situations, at least two weeks prior to the planned execution of a sole source contract having a value of between \$10,000 and \$75,000, the supervisor must forward to the Secretary a notice of intent to execute the sole source contract and the justification for the same. If the Secretary does not object, the contract may be executed. For sole source contracts having a value of more than \$75,000, the Secretary must approve the contract prior to its execution by the supervisor.

2. **Waivers and Contracting Plans:** The Secretary may waive provisions of this Bulletin on a

case by case basis pursuant to a written request from a supervisor. Any such request must describe in detail the basis for the request and the specific component(s) of the contracting process for which the waiver is sought.

Additionally, for specific classes of contracts exhibiting characteristics which can not reasonably be accommodated within the requirements of this Bulletin, the Secretary may approve a written contracting plan that provides an acceptable alternative to any requirement of this Bulletin. **(All such contracting plans approved pursuant to prior versions of this Bulletin must be resubmitted for renewed approval to the Secretary within 6 months of the effective date of this Bulletin.)**

VI. APPLICABLE BIDDING PROCESS REQUIREMENTS

A. Contracts \$10,000 or less

A supervisor may enter into a contract for \$10,000 or less without a formal competitive solicitation process. At the time of contract execution, the supervisor must place in the official contract file a signed explanation for selecting the contractor. Such explanation must include:

1. A description of the qualifications of the contractor supporting the policy that the services or products to be provided by the vendor must be of high quality;
2. A description of the prices charged by the vendor and an explanation as to why such charges are both cost effective and reasonable.

B. Contracts greater than \$10,000 but not more than \$75,000

A supervisor may enter into a contract over \$10,000 but not more than \$75,000 following either a formal bid or simplified bid process. A "simplified bid process" means that the agency has developed a specific and detailed scope of services for the service or product desired and has solicited written price quotations from vendors providing the specified services or products. The scope of services and request for price quotations must be mailed in a timely manner to at least three potential bidders. If the agency is unsure whether the contract will fall below the \$75,000 threshold, in order to avoid rebidding the work, the use of a formal bid process is recommended.

C. Contracts greater than \$75,000

A supervisor may enter into a contract greater than \$75,000 only after adherence to a formal bid process in compliance with the provisions of this Bulletin.

D. Exceptions

In some cases, state or federal statutes require bidding at lower amounts. Such statutes must be followed. For example: 19 VSA § 10(1) requires bidding of transportation contracts above

\$50,000 and 29 VSA § 161 requires public bidding of building contracts above \$50,000.

VII. CONTRACT DRAFTING AND REQUISITE APPROVALS

A. Drafting the Contract

Contracts, of any amount, must be in writing. Each contract must:

1. describe the scope of services to be performed or products to be delivered by the contractor, including the schedule for performance and applicable standards by which the contractor's performance will be measured;
2. specify a maximum amount of money to be paid by the State under the contract;
3. describe how, when, and for what the contractor will be paid.

Generally, it is recommended that the bid documents and bid proposal be incorporated in the contract by reference in order to support the contract with these important source documents. Additionally, the contract must include the customary state contract provisions (known as Attachment C - See Appendix V).

Insurance - It is very important that appropriate insurance be included in the contract to protect the State's interests. Standard insurance coverage provisions are included in Attachment C and are intended to cover most of the situations encountered. However, there may be a need for additional types of insurance, depending on the circumstances, e.g. professional liability insurance, and/or for higher insurance limits when relatively dangerous or hazardous activities are contemplated. Agencies should consult with the Director of Risk Management for guidance in such instances. Conversely, there may be instances in which the limits may be reduced or eliminated altogether from the contract. Such modifications, however, may only be undertaken with a waiver from either the Director of Risk Management or the AG.

When a contract extends for more than one page, each page should be numbered sequentially and the total number of pages should be noted on each page, (e.g., "Page 3 of 6")

For contracts of \$10,000 or less, formats can be brief. An adequate small contract could consist of a single sheet, labeled "Contract", stating the parties and the essential terms with the customary state contract provisions (Attachment C) attached. The essential terms are the work to be performed or products to be delivered, the beginning and ending dates or date of delivery, the amount payable (maximum amount for services contracts), and payment provisions.

For contracts greater than \$10,000, it is recommended, in the interests of consistency, that standard forms be utilized. A Standard State Contract for Personal Services is included in this Bulletin as Appendix I. Use of this form might speed any necessary approval process. The form of any contract for products should be reviewed and approved in advance by the AG.

When the complexity or other aspects of a contract dictate use of other than the Standard State Contract form, an agency must ensure that all the terms in the Standard Contract (and its Customary Provisions) or suitable substitute provisions are utilized. The tax status certifications, child support, and equal opportunity clauses are particularly important as they are statutorily required. **It is not permissible to include a clause restricting the ability of the contractor to hire state employees, without prior permission of the Department of Personnel.**

If an agency has many contractors doing the same work for similar rates of pay, it may prefer to use Form AA-16 ("Miscellaneous Agreement"). AA-16 is used to authorize payment of persons such as foster grandparents, special education hearing officers, and other volunteers or contractors where many persons provide similar services.

B. Required Prior Approvals

An agency may have to obtain prior approval of a contract from the Secretary, the AG, or both. No contract requiring prior approval should be executed until after all required approvals have been obtained.

1. **Attorney General Review:** Pursuant to 3 V.S.A. § 311(a)(10), the AG must give prior written approval to any contract over \$10,000 to determine if it is consistent with the intent of the classified service. This approval can be by an assigned "in-house" Assistant AG (AAG) or by the AG's central office. In addition, the AG or "in-house" legal counsel must review contracts in excess of \$10,000 which do not utilize the Standard State Contract for Personal Services to ensure that the form of the contract is appropriate ("approval as to form"). The AG will review as to form contracts for \$10,000 or less upon request. Review as to form can help ensure that expectations of the parties and payment plans are clear and enforceable, and is highly recommended for complex contracts.

2. **Secretary of Administration:** The Secretary, or his/her designee, must give prior approval to any sole source contract over \$75,000 and any contract in an amount over \$250,000.

C. Obtaining Prior Approvals

For any contract greater than \$10,000, an AA-14 (Contract Summary and Certification Form) must be completed. At the time an AA-14 is being prepared, the agency should obtain a contract number from the Department of Finance and Management, Division of Financial Operations.

1. **Attorney General Only:** If an in-house AAG is available, the agency should prepare an AA-14 and have the AAG review and approve it. Whenever approval is required by the AG's central office, the agency must forward the draft contract to the AG with a completed form AA-14.

2. **Attorney General and Secretary of Administration:** When a contract requires prior approval by both the Secretary and the AG's central office, the unsigned original and one copy of

the contract, accompanied by a signed AA-14 (three parts), must be sent to the Department of Finance and Management, Division of Budget and Management (F&M) .

Any contracts sent to F&M for prior approval should be sent at least two weeks before the planned execution date. If less time is available, a letter of explanation should be attached. For contracts taking effect on July 1, contract papers should be submitted not later than June 1.

F&M will forward the contract and AA-14 to the AG for review. Upon receipt of the decision of the AG, F&M will forward the contract, the AA-14, its own recommendation and the decision of the AG to the Secretary for approval.

If approved, the Secretary will return the contract papers to F&M where one copy of the AA-14 and contract will be retained and the remaining documents will be returned to the agency.

If an in-house AAG is available, the agency should prepare an AA-14 and have the AAG review and approve it. Then, the AA-14, the original and one copy of the contract should be sent to F&M for its review and the Secretary 's approval.

D. No Approvals Required

When no prior approvals by the AG or the Secretary are required, the agency should obtain a contract number from F&M and complete an AA-14. It is the responsibility of the agency to file the AA-14 and the contract payment provisions with Financial Operations.

VIII. CONTRACT EXECUTION, REQUISITE FILINGS AND RECORDS

A. Execution

A contract must be signed by the appropriate supervisor or his/her designee, consistent with Bulletin 3.3 relating to signature authorizations.

B. Filings

After a contract has been fully executed, the agency should:

1. Deliver a copy of the entire contract, as executed, to the contractor;
2. Send the original (fully approved) AA-14 and a copy of the Attachment B (payment provisions) to Financial Operations. Financial Operations will not pay on any contract greater than \$10,000 for which it does not have an AA-14 on file.

If an agency so requests for a particular contract, Financial Operations may review and render an opinion as to whether proposed payments actually are authorized under the contract's payment provisions. This double check on agency calculations can be helpful,

particularly when payment provisions are complex. Agencies should not request this service when payments are of a routine nature and a duplicate review would be of little value, such as in prearranged amounts. To have this check performed, an agency should request the service on the AA-14.

C. Contract File

An agency must maintain an up-to-date contract file that is an official public record. For all contracts, agencies must keep the following records on file, as public records, for at least three years after the contract's term expires:

1. The signed original contract, all amendments and associated AA-14's or AA-16's, a sole source authorization, if applicable; and
2. For contracts of \$10,000 or less, the written explanation for contractor selection;
3. For contracts greater than \$10,000 through \$75,000, the scope of services, price quotations, a list of vendors solicited, and any written determinations of the supervisor;
4. For contracts greater than \$75,000, the documents described in subsection 3 above, the bid documents, vendor bids, any adjustments to or written interpretations of the bid documents, any staff analyses and/or recommendations regarding the bid;
5. For contracts of more than two years duration, a written explanation detailing the reasons for the longer than normal contract length.

IX. PAYMENTS TO CONTRACTORS

Payment is made through the Division of Financial Operations by submission of a Standard State Invoice (Form AAF-23) accompanied by the original invoice from the contractor. The payment request must include the contract number, if applicable.

X. CONTRACT AMENDMENTS

One purpose of this Bulletin is to minimize contract amendments, especially as they relate to significant changes in the scope of services and/or contract price amount. It is generally desirable to avoid contract amendments because they emphasize negotiations between an agency and a contractor and thus can diminish the advantages of the competitive bidding process. Also, extensive contract amendments may indicate that an agency did not define and develop a thorough scope of services for the work.

However, instances will occur when a contract amendment is justified. In such instances, the agency should negotiate with the contractor to amend a contract in the best interests of the State.

Generally, a supervisor may execute a contract amendment. An amendment must be approved in advance by the AG and the Secretary in the following two situations:

1. The amendment is the third or more to the contract: and/or
2. The cumulative effect of the amendment and all prior amendments increases the contract price above the following thresholds:
 - a. For contracts less than \$75,000, 25% of the original contract amount or \$2,500, whichever is greater;
 - b. For contracts between \$75,000 and \$250,000, 25% of the original contract amount or \$40,000, whichever is less;
 - c. For contracts greater than \$250,000, 15% of the original contract amount.

A contract amendment must include the original contract number and a sequential amendment number. It also should describe what parts of the contract are deleted or changed, and what parts added. The agency must forward to Financial Operations an amended AA-14 and any changed payment provisions for each amendment.

Prior approval requests to the AG and/or the Secretary should be forwarded to F&M and include two copies of the current contract and the proposed amendment and a revised AA-14. The AA-14 should show the original contract number and a change number. The amendment should not be signed until approved.

After an amendment has been signed, the agency must ensure that current payment provisions (known as attachment B - See Appendix III) are filed with Financial Operations.

Agencies must not use multiple contracts to procure goods and/or services that can reasonably be procured through one contract, nor use the contract amendment process to avoid the requirements in this Bulletin relating to competitive solicitation.

Changes to the list of persons payable under an AA-16 may be made in a letter submitted to F&M for approval.

XI. ANNUAL REVIEWS

In order to promote compliance with the provisions of this Bulletin, F&M will conduct management reviews of performance relative to the policy and requirements herein. The results of such reviews are subject to public disclosure.

Appendix I

Standard State Contract for Personal Services

Use of the Standard State Contract is recommended. In most cases, if used, contracts can be quickly written and will consist of only a few pages.

The Standard Contract describes only the central terms. It also incorporates four attachments, each of which is discussed in a separate appendix to this Bulletin. Attachments A and B are used to describe what the contractor will do and how the contractor will be paid (See Appendices II and III for commentary).

Attachment C normally will be a preprinted document which contains standardized provisions on a variety of subjects (See Appendices IV and V for text and commentary). When the preprinted document cannot convey all the terms and conditions the agency wants to include, additional terms can be added as an Attachment D (See Appendix VI for sample provisions).

Paragraph #1 of the contract should identify the contractor's form of business organization. Possibilities include an individual, a sole proprietorship (an individual acting under a business name), a partnership, an unincorporated association, a corporation, a municipality, a state, or a federal agency. The form of organization is important because, except for an individual doing business in his/her own name, every legal entity doing business must register with the Secretary of State. If you are not sure if the contractor is doing business as an individual, call the Secretary of State's Office, Corporations Division.

In addition, only certain kinds of business entities must certify their child support payment status.

Paragraph #1 must include the Contractor's Business Account Number issued by the Vermont Department of Taxes. An individual contracting in his/her own name does not need such a number. Any business with employees or which is required to pay Sales and Use tax should have such a number. The Departments of Taxes and Finance and Management can use this information to withhold payment to a contractor who is not in good standing with respect to taxes owed to the State.

In the signature blocks, type in Contractor's full legal name. If the Contractor is an individual, cross out the word "Title".

STATE OF VERMONT Contract # _____
STANDARD CONTRACT FOR PERSONAL SERVICES

1. Parties This is a contract for personal services between the State of Vermont, _____ (hereafter called "State"), and _____, with _____ principal place of business in _____, (hereafter called "Contractor"). Contractor's form of business organization is _____. Contractor (is/is not) required by law to have a Business Account Number from the Vermont Department of Taxes. Account Number is (# _____/not required by law).

2. Subject Matter The subject matter of this contract is personal services generally on the subject of _____. Detailed services to be provided by the contractor are described in Attachment A.

3. Maximum Amount In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$_____.00.

4. Contract Term The period of contractor's performance shall begin on _____, 19__ and end on _____, 19__.

5. Prior Approvals If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

- Approval by the Attorney General's Office /is/is not/ required.
- Approval by the Secretary of Administration /is/is not/ required.

6. Amendment No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. Cancellation This contract may be canceled by either party by giving written notice at least _____ days in advance.

8. Attachments This contract consists of _____ pages including the following attachments which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C - "Customary State Contract Provisions", a preprinted form (revision date **2/95**), except that the following numbered paragraphs are not included:

_____.

Attachment D - Other Provisions.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

by the STATE OF VERMONT

Date: _____

Signature: _____

Name: _____

Agency: _____

by the CONTRACTOR

Date: _____

Signature: _____

Name: _____

Fed.ID/S.Sec # _____

Title: _____

APPENDIX II

GUIDELINES FOR ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

Attachment A of a Standard State Contract describes the nature and extent of the Contractor's obligations. This is the most important part of the contract. To avoid problems later, you should make the description clear, unambiguous and complete. Specify all performances and products to be delivered. Avoid "legalese"; plain English is sufficient and preferred.

The following checklist should be helpful in writing specifications:

1. Does the work statement let the contractor know what is ahead? Is it specific enough to allow the contractor to make a list of human resources and, if necessary, special facilities, equipment, subcontracts and/or consultants needed to accomplish the work?
2. Is general and background information separated from directions to the contractor and required performance? The minimum that the contractor is expected to do should be clearly described.
3. Have the agency's responsibilities to the contractor been clearly identified? If not, the state could find it more difficult to enforce its rights under the contract.
4. Will it be possible to measure performance? Are the end results and specific duties of the Contractor stated in such a way that he/she/it knows what is required and the agency official who orders payment can tell whether payment is due? Have the type and quantity of reports required of the contractor (technical, financial, progress, etc.) been described and specified? Is there a date for each task or outcome the Contractor must deliver? If elapsed time is used, does it specify calendar days or work days? Are the desired quantities shown?
5. Are all documents necessary to the contract included by reference and properly cited, e.g. RFP, workplan?

APPENDIX III

GUIDELINES FOR ATTACHMENT B PAYMENT PROVISIONS

The main body of the Standard State Contract simply states the maximum amount to be paid. Attachment B describes payments in more detail. Attachment B should tell the Contractor:

1. Whether payment will be made based upon the passage of time or upon delivery of a product;
2. What bills, invoices or other proof of work the contractor must submit before being paid;
3. When and how much the contractor will be paid, and what deductions will be made from payments; and
4. Whether any expenses will be reimbursed, and to what limits.

Payments can be made periodically, upon completion of specific tasks, by percentage of the total contract performance, or by some combination of these methods. As a general rule, payments should be made only after work has been completed and delivered. One reason for this policy is the possibility of default and insolvency. An agency may not be able to recover its money from a contractor in receipt of a large prior payment and then having filed for bankruptcy. Also, if the contractor breaches the contract, a prior payment may not be recoverable without filing a lawsuit.

Periodic and Progress Payments

Most contracts provide for periodic payments, usually biweekly or monthly. To document work performed and to remind the agency to make payments, most contracts require the Contractor to submit an invoice or bill, showing the amount of work accomplished during the work period. Usually the contract will provide for an hourly or daily rate of payment, so the invoice should show the number of hours or days worked.

A more complicated provision provides for "progress payments", or payments made on completion of designated steps in the contract work. A progress payment might be made, for example, when a preliminary report is submitted and accepted. Such a payment provision should define carefully what the contractor must finish to be entitled to each intermediate payment.

A variation of the progress payment calls for payment when a specified percentage of the work has been completed.

Progress payments are useful because they require an agency to examine the work being done; but they also have pitfalls. When writing these provisions, make the steps realistic estimates of the way the work will be performed. If the Contractor cannot complete the specific steps until near the end

of the contract, the Contractor may have cash flow problems and thereby be unable to bid for or perform the work.

Retainage

When a final product is required, such as a final report, it is good practice to keep a significant amount of money, usually at least 10 percent, as a "retainage" to ensure performance.

Sample Attachment B Provisions

1. The State shall pay contractor as follows: _____

_____.
2. The State shall not be responsible for expenses of the Contractor.
- or -
2. The State shall reimburse contractor for reasonable and necessary expenses incurred in performance of this contract, in accordance with state reimbursement offered to state employees, and not to exceed a total amount of \$_____.
3. Contractor will submit a bill or invoice on or about _____ to:
Name: _____
Title: _____
Department: _____
Address: _____

4. The Contractor agrees to a 10% retainage of the total contract fee subject to review, approval and acceptance of Contractor's final report by the State.

APPENDIX IV

GUIDELINES FOR ATTACHMENT C PREPRINTED CUSTOMARY PROVISIONS

Appendix V is a copy of a preprinted form containing Customary Provisions for state contracts. The Customary Provisions form normally will be included in its entirety in a contract as Attachment C.

All personal services contracts should require basic insurance coverage and limits. (See Attachment D for professional liability and owner's protective liability insurance provisions). Exceptions must be reviewed and approved in advance by either the AG or the Risk Management Division. In no case should coverage or limit requirements be reduced in the case of direct client care, particularly involving minors.

APPENDIX V

ATTACHMENT C: CONTRACTS FOR SERVICES CUSTOMARY STATE CONTRACT PROVISIONS (Revised 8/95)

1. **Entire Agreement:** This contract represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This contract will be governed by the laws of the State of Vermont.
3. **Appropriations:** If this contract extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this contract, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority.
4. **No Employee Benefits For Contractor:** The contractor understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation and sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the contract. The Contractor understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including, but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the contractor, and information as to contract income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
5. **Independence, Liability:** The Contractor will act in an independent capacity and not as officers

or employees of the State. The contractor shall indemnify, defend and hold harmless the State and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the Contractor's acts and/or omissions in the performance of this contract.

6. Insurance: Before commencing work on this contract the contractor must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the contractor to maintain current certificates of insurance on file with the state through the term of the contract.

Workers Compensation: With respect to all operations performed, the contractor shall carry workers compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Independent Contractors' Protective
- Products and completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Per Occurrence
- \$1,000,000 General Aggregate
- \$1,000,000 Products / completed products aggregate
- \$50,000 Fire Legal Liability

Automotive Liability: The contractor shall carry automotive liability insurance covering all motor vehicles, no matter the ownership status, used in connection with the contract. Limits of coverage shall not be less than: \$1,000,000 Combined single limit.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that have been set to protect the interests of the state.

7. Reliance By the State on Representations: All payments by the State under this contract will be made in reliance upon the accuracy of all prior representations by the contractor, including but not limited to bills, invoices, progress reports and other proofs of work.

8. Records Available for Audit: The Contractor will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and

make them available at reasonable times during the period of the contract and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this contract.

9. Fair Employment Practices and Americans with Disabilities Act: Contractor agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Contractor under this contract. Contractor further agrees to include this provision in all subcontracts.

10. Set Off: The State may set off any sums which the Contractor owes the State against any sums due the Contractor under this contract; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

11. Taxes Due To The State:

a. Contractor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

b. Contractor certifies under the pains and penalties of perjury that, as of the date the contract is signed, the Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

c. Contractor understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the Contractor is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

d. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor has no further legal recourse to contest the amounts due.

12. Child Support: (Applicable if the Contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the contract is signed, he/she:

a. is not under any obligation to pay child support; or

- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Contractor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Contractor is a resident of Vermont, Contractor makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

13. Subcontractors: Contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the prior written approval of the State. Contractor also agrees to include in all subcontract agreements a tax certification in accordance with paragraph 11 above.

14. No Gifts or Gratuities: Contractor shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this contract.

15. Copies: All written reports prepared under this contract will be printed using both sides of the paper.

(End of Customary Provisions)

APPENDIX VI

GUIDELINES FOR ATTACHMENT D OTHER CONTRACT PROVISIONS

Many contracts can be fully described using the materials described in preceding Appendices to this Bulletin. In some cases, however, agencies will want to add specially tailored provisions not available on preprinted forms or in the main contract itself. In addition, when contracting for professional services, agencies will be required (absent an appropriate waiver) to include a professional liability insurance provision. Attachment D of the contract, "Other Provisions", should be used for this purpose.

Some possible "Other Provisions" are suggested below.

Cost of Materials: Contractor will not buy materials and resell to the State at a profit.

Identity of workers: The Contractor will assign the following individuals to the services to be performed under the provisions of this contract, and these individuals shall be considered essential to performance. [cite individuals]. Should any of the individuals become unavailable during the period of performance, the State shall have the right to approve any proposed successors, or, at its option, to cancel the remainder of the contract.

Progress reports: The Contractor shall submit progress reports to the State according to the following schedule. [cite schedule]. Each report shall describe the status of the Contractor's performance since the preceding report and the progress expected to be made in the next successive period. Each report shall describe Contractor activities by reference to the work specifications contained in Attachment A of this contract and shall include a statement of work hours expended, expenses incurred, and bills submitted, and payments made.

Comment: This clause may be used either in Attachment A (Specifications of Work to be Performed) or here. It provides information for interim evaluation of the Contractor's work and assists in detecting difficulties which may lead to necessary modification or cancellation of the contract. If payments are to be conditioned on receipt of progress reports, this should be clearly set forth in Attachment B (Payment Provisions).

Compliance with Other Laws: The Contractor agrees to comply with the requirements of [cite specific applicable federal or state statutory or regulatory provisions], and agrees further to include a similar provision in any and all subcontracts.

Comment: Use this clause to refer to any statutory or regulatory provisions which must by law, grant condition or otherwise, be included in the wording of the contract. This may include in particular cases the provisions of the Federal Rehabilitation Act of 1973 (Sec. 504), as amended; the Age Discrimination Act of 1975; and the Civil Rights Act of 1964.

Availability of Federal Funds: This contract is funded in whole or in part by federal funds. In the event the federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract immediately, and the State shall have no obligation to pay Contractor from State revenue.

Comment: Use this clause when the state agency is not willing or able to compensate for the loss of federal funds on short notice. Agency fiscal officers should closely monitor funding availability and performance under these contracts, as the State may remain liable for expenditures made in good faith by the Contractor prior to notice of cancellation.

Audit of Federal Subrecipient: Under current interpretations of federal law, contractor will be considered a "subrecipient" subject to the federal single audit act. Contractor will comply with audit requirements contained in Circular A-128/Circular A-110 and/or other applicable circular of the U.S. Office of Management and Budget. The cost of such an audit will be borne by the contractor/is included in the payment provisions of this contract.

Comment: Current federal law defines a "subrecipient" of federal money as an organization which receives federal assistance from a recipient (the agency) to carry out a program. Such subrecipients are subject to federal audit requirements.

However, if a contract is a "procurement contract to buy goods or services", the contractor is not a subrecipient and is not subject to federal audit requirements. Most personal services contracts should be exempt from federal audit requirements for this reason. Agency officials should consult federal officials about whether the language above should be included in a particular contract.

Work Product Ownership: Upon full payment by the State, all products of the Contractor's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by contractor.

Prior Approval/Review of Releases: Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the Contractor under this contract shall be approved/reviewed by the

State prior to release.

Comment: All material published in connection with activities performed under State contract should be reviewed and approved by the appropriate official before release. When academic freedom becomes an issue, agency review but not agency approval may be appropriate.

Ownership of Equipment: Any equipment purchased by or furnished to the Contractor by the State under this contract is provided on a loan basis only and remains the property of the State.

Legal Services: Contractor will be providing legal services under this contract. Contractor agrees that during the term of the contract he or she will not represent anyone in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. After termination of this contract, Contractor also agrees that he or she will not represent anyone in a matter, proceeding, or lawsuit substantially related to this contract.

Contractor's Liens: Contractor will discharge any and all contractors or mechanics' liens imposed on property of the State through the actions of subcontractors.

Comment: On occasion a subcontractor may do some work to State property that could be construed by the subcontractor to give rise to a lien against the property. While artisan's (mechanic's) liens cannot be enforced against State property (See 12 VSA s.5601(a)), it is nevertheless best practice to require the contractor to correct the matter and thereby avoid litigation.

Performance Bond: The contractor shall, prior to commencing work under this contract, furnish to the State a payment and performance bond from a reputable insurance company licensed to do business in the State of Vermont, guaranteeing the satisfactory completion of the contract by the Contractor and payment of all subcontractors, suppliers and employees.

Comment: **Performance Bonds have limited application in contracts for services.** This clause provides protection against failure of the Contractor to perform adequately under the contract or distribute funds to subcontractors or suppliers. Since the cost of the bond will increase the State's cost, the clause should only be used on larger contracts or where there are significant concerns about a Contractor's financial or other abilities. If a Contractor is expected to handle large sums of money as agent for the State, the term "surety bond" should be substituted for "payment and performance bond".

Owner's Protective Liability Insurance: The Contractor shall carry liability insurance protecting the State and the Contractor from all claims because of bodily injury or death and property damage, arising out of the work performed under the contract. The liability insurance shall be in an amount not less than **\$1,000,000** and a certificate of insurance shall be furnished to the State before commencement of work.

Comment: Owner's Protective Liability Insurance should be utilized when a contractor's business involves work at multiple job sites (not necessarily all for the State and it is unclear whether the contractor would have adequate insurance coverage in the event of multiple occurrences at different sites. For example, contracts with large construction companies should include such a clause.

Professional Liability Insurance: Before commencing work on this contract and throughout the term of this contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$_____ per occurrence.

Comment: Professionals with whom the State contracts, e.g. lawyers, architects, physicians, health care providers, must be required to maintain professional liability insurance in sufficient amounts to protect the State's interest from the consequences of negligence. The Director of Risk Management will determine the minimum amount appropriate for different classes of professionals.

APPENDIX VII

GUIDELINES FOR REQUESTS FOR PROPOSALS

These guidelines should be used as a checklist by agencies to ensure that proposers receive adequate and timely information on all important matters. The guidelines should improve the quality and efficiency of preparing requests.

The guidelines are stated in general terms because requesters must tailor each request for a proposal so as to clearly reflect their specific needs or requirements. Accordingly, these guidelines are not mandatory. They are illustrations which may be modified or eliminated as appropriate.

LETTER OF TRANSMITTAL

An RFP package should include a cover letter which identifies:

1. Name and address of contact person;
2. Due date, **time and location** for responses;
3. Notification of any scheduled bidders' conference, including location, date and time, and stating whether attendance is a condition of selection;
4. Any other special requirements of the RFP process.

INTRODUCTION

The RFP itself should explain its purpose and the nature of the services that are sought.

Example: The purpose of this request is to obtain from independent management consulting firms proposals to perform a management study of the Division of External Obfuscation.

REQUIREMENTS FOR SUBMISSION

The RFP should explain the process and minimum requirements for submission of proposals.

Example: The proposal must be **received** no later than January 1, 1991, **by:**

John Doe
Executive Assistant
Division of Prolix Bulletins
109 State Street
Montpelier, Vermont 05602

The Division reserves the right to accept or reject any or all bids. The proposals will be evaluated by the staff of the

Division. If a firm is selected, representatives will be invited to negotiate a contract.

BRIEF DESCRIPTION OF THE ORGANIZATION

The RFP should provide needed general information, such as the type of government unit, its statutory authority, budget size, number of employees, and population served. For any associated governmental units, explain their involvement or relationship to the organization. Briefly explain the mission or purpose of the organization. It is usually efficient to supply information from existing documents as an attachment to the RFP. Also describe any recent published documents which may contribute to the scope of services, such as financial audits, program reviews or technical studies.

Example: The Division was created by the Vermont General Assembly in 1980. The authority of the Division's Director is specified in 44 V.S.A. section 9999. The Division is mandated to (explain mission, purpose, services).

The Division has two advisory boards which are funded from state General Funds, and which meet quarterly. Attachment A to this RFP is a copy of the statutory language. Attachment B presents a copy of the Division budget for fiscal year 1991.

SCOPE OF SERVICES REQUESTED

The RFP should explain and clearly describe the scope of services to be provided. Be specific about terms of financial and/or program reviews, examinations, or services desired. Be clear about due dates. Include specifications for technical proposals.

Example: The management study will provide an independent judgment of the financial, administrative and marketing operations of the Division. The report, due on January 15, will identify areas of weaknesses and specific recommendations for improvements.

The selected consultant will review and consider the following:

1. Mission
2. Short and long term goals
3. Organization
4. Budget
5. Financing

The RFP should explain the nature of any assistance that will be available to the selected firm. Describe to what degree

organization staff will be available to assist on the project. Also describe whether physical resources will be available.

Example: The division's personnel staff and accounting staff will be available to produce financial and personnel documents. Staff will undertake some research for consultant, but in-depth work must be done as part of the contract. Staff will be available for interviews by consultant. Consultants may use division office space and telephones for a period of two weeks.

The RFP should explain clearly and concisely the primary objective of the review. What is the expected outcome?

Example:

1. Opinion on financial statements
2. Evaluation of accounting systems
3. Evaluation of compliance with legislative mandate
4. Economy, efficiency and/or effectiveness of programs or operations.
5. Relative success of meeting goals and objectives.
6. Plans or recommendations for systems improvements.
7. Technical design.

REPORT FORMAT

If a report is to be the final product, the RFP should explain what should be in it. Specify to whom the report is to be addressed, and what form it should be in, including number of copies.

If you desire interim progress reports, preliminary final draft reports, or confidential draft copies of the report in advance of final publication, provide a time frame and dates.

RESTRICTIONS AGAINST DISCLOSURE

Sometimes agencies have legitimate needs to protect confidential information. The RFP can require contractors to maintain confidentiality, although the contract ultimately should duplicate this requirement.

Example: The Bidder agrees to keep the information related to the Division and all related agencies confidential. Other than the reports submitted to the Division, the Bidder agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner of form or authorize or permit others to do so. Bidder will take reasonable measures as are necessary to restrict access to the information, while in the Bidder's possession, to those employees on his/her staff and the agency who must have the

information on a "need-to-know" basis, and (s)he agrees to immediately notify, in writing, the Division's Authorized Representative in the event (s)he determines or has reason to suspect a breach of this requirement.

Conversely, bidders sometimes want to know how the state will treat their proprietary information. The RFP should state whether such information will be returned or retained by the agency.

PROPOSAL FORMAT

In order to simplify the review process and to obtain the maximum degree of comparability, agencies should require that proposals be organized in a manner specified in the RFP. The following outline suggests how a proposal can be organized to include all necessary information.

Example: The offerer must include in the proposal the following information:

1. A brief description of the firm which includes its history, organization structure and size.
2. An illustrative list of contracts for services performed by the firm within the past two years. A short narrative describing the nature and extent of each engagement should be provided. Please indicate those organizations which may be contacted by the Division as references.
3. A copy of the firm's last financial statement.
4. A statement and discussion of the Offerer's analysis of the requirements. This should include:
 - a. A proposed scope of work with an explanation of technical approaches and a detailed outline of the proposed program for executing the objectives of the RFP.
 - b. A description of the number of direct hours of activity by each principal who will work on the project, broken out by major activity.
 - c. Statements and discussion of anticipated major difficulties and problem areas, together with potential or recommended approaches for their solution.
5. A description or rationale for the proposal, including:
 - a. An explanation as to why the intended approach submitted is better than any other approach which could be employed.
 - b. An explanation of why the number of direct hours proposed will

be sufficient to the task.

c. A statement of the extent to which the proposed approach and program can be expected to meet or exceed requirements and specifications of the scope of work.

starting any 6. A work plan for the engagement including the appropriate and ending dates of specific activities, and the issuance date of final report.

time material 7. A statement of whether the contractor will be reimbursed on a and material basis or on a fixed price basis. If time and compensation is desired, the cost proposal should indicate the estimated maximum total cost with a breakout of:

a. Fees for staff time, showing the level of staff to be assigned, titles, hourly rates and estimated number of hours.

b. Travel expenses, including transportation costs, lodging, and subsistence.

c. Detailed analyses for all overhead and other costs.

Reimbursement for time and materials will be by voucher based upon the actual staff assigned at the rates provided and upon actual other costs incurred based upon documentation acceptable to the Division, subject to the maximum amount indicated.

of the hours 8. Resumes with detailed qualifications and levels of competence of individuals to be assigned to the project. This should include the total number of such individuals at each level and the estimated hours to be spent by each.

EVALUATION CRITERIA

The RFP should explain evaluation criteria that will be used in selecting a contractor. A point scale presented in tabular format is often useful to the bidder.

Example: The Division will review the proposal and evaluate based on the following criteria:

| <u>Criterion</u> | <u>Maximum possible points</u> |
|--|--------------------------------|
| A. Prior Experience: | |
| 1. Completed work of similar type | 5 |
| 2. Published results professionally | 5 |
| B. Organization Size and Structure of Offerer's firm. (Considering size in relation to work to be performed.) | 5 |

| | |
|--|----|
| C. Quality of staff and supervisors | |
| 1. Qualifications of staff to be assigned | 15 |
| 2. Supervision to be exercised over staff by firm's management. Education, position in firm, years and types of experience will be considered. | 10 |
| D. Offerer's understanding of work to be performed. This will be determined by the approach to the work and the time estimates to perform each activity. | |
| 1. Quality of understanding of work | 20 |
| 2. Adequate staff to meet deadlines | 10 |
| 3. Realistic time estimates for each activity | 10 |
| E. Cost (Price = \$_____) | 20 |

Maximum Points 100

Each proposal will be independently evaluated on Factors A through E by two or more qualified individuals. A composite score will be computed based on those independent evaluations.

QUESTIONS CONCERNING RFP

The RFP should state where questions concerning its contents should be addressed:

Example: Questions concerning this request for proposal should be sent to

John Doe
Division of Prolix Bulletins
109 State Street
Montpelier, Vermont 05602
(802) 828-9999